

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation  
Against:**

**Rina Biren Shah, M.D.**

**Case No. 800-2015-014246**

**Physician's and Surgeon's  
Certificate No. A 121009**

**Respondent**

**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on March 29, 2018.**

**IT IS SO ORDERED February 27, 2018.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
**Kristina D. Lawson, J.D., Chair  
Panel B**

1 XAVIER BECERRA  
2 Attorney General of California  
3 JANE ZACK SIMON  
4 Supervising Deputy Attorney General  
5 LAWRENCE MERCER  
6 Deputy Attorney General  
7 State Bar No. 111898  
8 455 Golden Gate Avenue, Suite 11000  
9 San Francisco, CA 94102-7004  
10 Telephone: (415) 703-5539  
11 Facsimile: (415) 703-5480  
12 *Attorneys for Complainant*

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**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

11 **RINA BIREN SHAH, M.D.**  
12 50 E. Hamilton Ave.  
13 Campbell, CA 95008

Physician's and Surgeon's Certificate No. A121009,

Respondent.

Case No. 800-2015-014246

OAH No. 2017100497

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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**IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-entitled proceedings that the following matters are true:

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Lawrence Mercer.

2. Respondent Rina Biren Shah, M.D. (Respondent) is represented in this matter by her attorneys Thomas E. Still, Esq. and Hinshaw, Marsh, Still & Hinshaw, 12901 Saratoga Avenue, Saratoga, CA 95070.

3. On or about April 18, 2012, the Medical Board of California issued Physician's and Surgeon's Certificate Number A121009 to Rina Biren Shah, M.D. The Physician's and

1 Surgeon's certificate was in full force and effect at all times relevant to the charges brought herein  
2 and will expire on August 31, 2019, unless renewed.

3  
4 JURISDICTION

5 4. On June 16, 2017, Complainant Kimberly Kirchmeyer, in her official capacity as the  
6 Executive Director of the Board, filed Accusation No. 800-2015-014246 (Accusation) against  
7 Respondent. The Accusation was duly served upon Respondent and she timely filed a Notice of  
8 Defense. A copy of the Accusation is attached hereto as Exhibit A.

9  
10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 800-2015-014246.

13 6. Respondent has carefully read and fully understands the contents, force and effect of  
14 this Stipulated Settlement and Disciplinary Order, and has fully reviewed and discussed same  
15 with her attorney of record.

16 7. Respondent is fully aware of her legal rights in this matter including her right to a  
17 hearing on the charges and allegations contained in Accusation No. 800-2015-014246, her right  
18 to present witnesses and evidence and to testify on her own behalf, her right to confront and  
19 cross-examine all witnesses testifying against her, her right to the issuance of subpoenas to  
20 compel the attendance of witnesses and the production of documents, her right to reconsideration  
21 and court review of an adverse decision, and all other rights accorded her pursuant to the  
22 California Administrative Procedure Act, the California Code of Civil Procedure, and all other  
23 applicable laws, having been fully advised of same by her attorney of record. Respondent, having  
24 the benefit of counsel hereby knowingly, intelligently, freely and voluntarily waives and gives up  
25 each and every one of the rights set forth and/or referenced above.  
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CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2015-014246 and that she has thereby subjected her Physician's and Surgeon's Certificate to disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

9. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including electronic PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

//

**DISCIPLINARY ORDER**

**A. PUBLIC REPRIMAND**

**IT IS HEREBY ORDERED:** that Physician's and Surgeon's Certificate No. A121009, issued to Respondent Rina Biren Shah, M.D., shall be and is hereby publicly reprimanded pursuant to California Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in connection with Respondent's actions as set forth in Accusation No. 800-2015-014246, is as follows:

On November 21, 2014, Patient A.R. was under your care and treatment for acute symptoms, which were consistent with possible acute appendicitis. Although you included possible acute appendicitis in your differential diagnosis, you failed to respond urgently to rule out that condition.

**B. MEDICAL RECORD KEEPING COURSE**

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision will be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

1 Respondent shall submit a certification of successful completion to the Board or its  
2 designee not later than 15 calendar days after successfully completing the course, or not later than  
3 15 calendar days after the effective date of the Decision, whichever is later. Failure to  
4 successfully complete the course in the time stated shall constitute unprofessional conduct.

5 **C. EDUCATION COURSE:** Within 60 calendar days of the effective date of this  
6 Decision, Respondent shall submit to the Board or its designee for its prior approval educational  
7 program(s) or course(s) which shall not be less than 40 hours. The educational program(s) or  
8 course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be  
9 Category I certified and shall include: assessment and treatment of acute and potentially urgent  
10 conditions. The educational program(s) or course(s) shall be at Respondent's expense and shall  
11 be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.  
12 CME taken after this Stipulation is signed but before the effective date of the Decision will be  
13 accepted toward fulfillment of this condition, if the course would have been approved by the  
14 Board or its designee had the courses been taken after the effective date of the Decision.  
15 Following the completion of each course, the Board or its designee may administer an  
16 examination to test Respondent's knowledge of the course. Respondent shall provide proof of  
17 attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

18 In consideration for her agreement to complete the education course, as set forth above,  
19 Respondent shall be publicly reprimanded as set forth in the public letter of reprimand, as set  
20 forth above in Paragraph 11(A).

21 Respondent understands that failure to submit and/or complete the education course, as set  
22 forth above, would constitute unprofessional conduct and grounds for further disciplinary action.

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ACCEPTANCE

I, RINA BIREN SHAH, M.D., have carefully read this Stipulated Settlement and Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No. A121009. I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon formal acceptance by the Board, I shall receive this Public Reprimand from the Board and shall be required to comply with the terms and conditions of the Disciplinary Order set forth above. I, also, fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and that my Physician's and Surgeon's Certificate No. A121009 will be subject to further disciplinary action.


Dated: 1.24.2018

  
\_\_\_\_\_  
RINA BIREN SHAH, M.D.

I have read and fully discussed with Respondent RINA BIREN SHAH, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

Dated: 1-24-2018

HINSHAW, MARSH, STILL & HINSHAW

  
\_\_\_\_\_  
THOMAS E. STILL  
Attorneys for Respondent

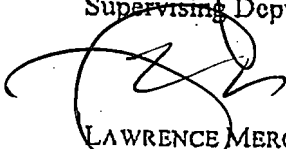
ENDORSEMENT

The foregoing Stipulation is respectfully submitted for consideration by the Medical Board  
of California, Department of Consumer Affairs.

Dated: *1/25/2018*

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
JANE ZACK SIMON  
Supervising Deputy Attorney General

  
LAWRENCE MERCER  
Deputy Attorney General  
*Attorneys for Complainant*

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Exhibit A

Accusation No. 800-2015-014246

1 XAVIER BECERRA  
Attorney General of California  
2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
3 LAWRENCE MERCER  
Deputy Attorney General  
4 State Bar No. 111898  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5539  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 800-2015-014246

11 **Rina Biren Shah, M.D.**  
12 50 E. Hamilton Ave.  
13 Campbell, CA 95008

**A C C U S A T I O N**

14 **Physician's and Surgeon's Certificate**  
15 **No. A 121009,**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Director of the Medical Board of California.

21 2. On or about April 18, 2012, the Medical Board issued Physician's and Surgeon's  
22 Certificate Number A 121009 to Rina Biren Shah, M.D. (Respondent). The Physician's and  
23 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein  
24 and will expire on August 31, 2017, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Medical Board of California (Board), under the  
27 authority of the following laws. All section references are to the Business and Professions Code  
28 unless otherwise indicated.

1           4.     Section 2227 of the Code provides that a licensee who is found guilty under the  
2 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
3 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
4 action taken in relation to discipline as the Board deems proper.

5           5.     Section 2234 of the Code states, in pertinent part:

6           “The board shall take action against any licensee who is charged with unprofessional  
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
8 limited to, the following:

9           “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
10 violation of, or conspiring to violate any provision of this chapter.

11          “(b) Gross negligence.

12          “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
13 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
14 the applicable standard of care shall constitute repeated negligent acts.

15          “(1) An initial negligent diagnosis followed by an act or omission medically appropriate  
16 for that negligent diagnosis of the patient shall constitute a single negligent act.

17          “(2) When the standard of care requires a change in the diagnosis, act, or omission that  
18 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
19 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
20 applicable standard of care, each departure constitutes a separate and distinct breach of the  
21 standard of care.”

22          6.     Section 2266 of the Code states: “The failure of a physician and surgeon to maintain  
23 adequate and accurate records relating to the provision of services to their patients constitutes  
24 unprofessional conduct.”

#### 25                                   **FIRST CAUSE FOR DISCIPLINE**

#### 26                                   **(Gross Negligence/Repeated Negligent Acts)**

27          7.     Respondent Rina Biren Shah, M.D. is subject to disciplinary action under section  
28 2234 and/or 2234(b) and/or 2234(c) in that Respondent engaged in unprofessional conduct and/or

1 was grossly negligent and/or committed repeated acts of negligence in her care and treatment of  
2 Patient A.R.<sup>1</sup> The circumstances are as follows:

3 8. Respondent first saw Patient A.R. on February 28, 2014, at which time she performed  
4 an annual physical examination. On November 21, 2014, A.R., a 35-year old male, returned to  
5 see Respondent for new complaints of abdominal pain in the right lower quadrant. His vital signs  
6 were noted, although a pulse reading was not recorded. A.R. gave a history of pain in the right  
7 lower quadrant for five days. He described the pain as sharp, moderate in degree and occurring  
8 every two minutes. A.R. advised that he had experienced a fever of 101 degrees for the previous  
9 two nights. He wondered if this might be attributed to a recent flu shot. He also stated that he  
10 had been constipated.

11 9. Respondent's history includes abdominal pain and constipation, but states "negative  
12 for chills, fatigue, fever and weight change." Respondent performed a physical examination and  
13 noted pain in the right lower quadrant of the patient's abdomen, but recorded no findings  
14 regarding masses, rebound tenderness or other peritoneal signs. Respondent formed a differential  
15 diagnosis of acute appendicitis, mesenteric adenitis and constipation. The patient was given an  
16 order for a routine abdominal ultrasound to be performed at a laboratory, but no blood tests were  
17 ordered. He was also given a laxative and advised on diet restrictions for the abdominal pain and  
18 the constipation, albeit the template generated instructions for one condition tended to contradict  
19 those for the other. Patient was told to return PRN, i.e., as needed. The note for the examination  
20 was not signed by Respondent until December 29, 2014.

21 10. Unable to get an ultrasound at the laboratory recommended by Respondent for at least  
22 a week, the patient returned to Respondent's office on the same day, which was a Friday, but was  
23 only given contact information for the Radiology Department at Good Samaritan Hospital and  
24 instructed to go to the ER if he experienced increased pain, nausea, fever or weight change. The  
25 patient did make an appointment for the first available date, which was the following Monday  
26 afternoon.

27  
28 <sup>1</sup> Patient names are abbreviated to protect privacy.

1        11. Patient A.R.'s condition did not improve, rather his pain and fevers increased in  
2 frequency and intensity over the weekend. He underwent an ultrasound at 1400 hours on the  
3 afternoon of November 24, 2014, after which the radiologist advised him to wait while they  
4 contacted Respondent for instructions. In his report, the radiologist wrote that the findings on  
5 ultrasound were "suggestive of acute appendicitis" and that an "abscess cannot be completely  
6 excluded." The radiologist noted that the findings were discussed with Respondent "near the time  
7 of the dictation." The dictation was timed at 1450 hours. A fax copy of the report was marked  
8 received by Respondent's office at 1559 hours.

9        12. After the telephone consultation with the radiologist, Respondent spoke with the  
10 patient and advised him to arrange an appointment for an "elective" appendectomy. At 1510  
11 hours, her office provided contact information for a surgeon. Respondent did not herself contact  
12 the surgeon regarding the patient's condition. Patient A.R. took the ultrasound results, which  
13 were in a closed envelope, and proceeded to the surgeon's office. There the ultrasound was  
14 reviewed by office staff, who strongly advised the patient to report directly to the ER.

15        13. Patient A.R. reported to the ER at Good Samaritan Hospital that afternoon at 1704  
16 hours. At 1722, his vital signs included a temperature of 38.9 degrees Celsius (102 degrees  
17 Fahrenheit), a pulse of 125 and respiratory rate of 22. The admission records reflect a history of  
18 right lower quadrant pain with associated symptoms of fever and constipation. A CT scan of the  
19 abdomen was performed at 1930 and reported to the ER at 1957 with results that included an  
20 impression of a dilated appendix with diffuse periappendiceal fat stranding suggestive of acute  
21 appendicitis and periappendiceal fluid collection with rim enhancement in the right lower  
22 quadrant suspicious for an abscess. A laparoscopic appendectomy for an acute ruptured  
23 appendicitis was performed the same night. Patient A.R. remained hospitalized for five days.

24        14. In a subsequent interview, Respondent stated that the patient did not give a history of  
25 fever during the face-to-face meeting on November 21, 2014. She also advised that he denied any  
26 fever during their telephone conversation on November 24, 2014. Hospital records for Patient  
27 A.R. show that he had a fever of 38.9 degrees Celsius (102 degrees Fahrenheit) when he presented  
28 to the ER. Hospital records also report the patient's account of a fever for "several days."

15. Respondent is guilty of unprofessional conduct and Respondent's certificate is subjected to discipline pursuant to Sections 2234 and/or 2234(b) and/or 2234(c) of the Code based upon her negligent care and treatment of Patient A.R., including but not limited to the following:

- A. Respondent failed to recognize an acute appendicitis;
- B. Respondent failed to order an urgent abdominal ultrasound;
- C. Respondent failed to coordinate the patient's care with a surgeon;
- D. Respondent failed to send the patient to the ER after learning the results of the abdominal ultrasound.

## SECOND CAUSE FOR DISCIPLINE

**(Failure to Maintain Adequate and Accurate Records)**

16. Respondent is subject to disciplinary action under Sections 2234 and/or 2266 of the Code in that Respondent failed to keep adequate and accurate records of her care for Patient A.R. The circumstances are as follows.

17. Complainant incorporates the allegations of the First Cause for Discipline as though fully set forth herein.

18. Respondent's records are incomplete, lacking significant information that includes, but is not limited to: an accurate account of symptoms reported by the patient, a pulse rate, peritoneal signs and a record of Respondent's telephone consultation with the patient after his ultrasound results.

19. Respondent's records are unreliable for reasons including, but not limited to: inaccurate template entries, contradictory and contraindicated post-visit care instructions and lack of signature and completion for 38 days post-visit.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 121009,  
issued to Rina Biren Shah, M.D.;

- 1           2.     Revoking, suspending or denying approval of Rina Biren Shah, M.D.'s authority to  
2 supervise physician assistants and advanced practice nurses;  
3           3.     Ordering Rina Biren Shah, M.D., if placed on probation, to pay the Board the costs of  
4 probation monitoring; and  
5           4.     Taking such other and further action as deemed necessary and proper.

6  
7 DATED: June 16, 2017

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
State of California  
Complainant

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